

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CMM-CM, LLC, D/B/A MULLER  
CONSTRUCTION, A NEVADA LLC,  
Petitioner,

vs.

THE FIRST JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CARSON CITY; AND THE  
HONORABLE JAMES TODD RUSSELL,  
DISTRICT JUDGE,

Respondents,

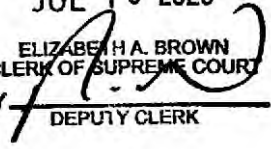
and

NEVADA STATE LABOR  
COMMISSIONER, A NEVADA  
ADMINISTRATIVE AGENCY; LOUIS  
DESALVIO; SALVADOR PLASCENCIA;  
AND ROBERT CONWAY,  
Real Parties in Interest.

No. 81039-COA

**FILED**

JUL 13 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER DENYING PETITION  
FOR WRIT OF MANDAMUS OR PROHIBITION*

This original petition for a writ of mandamus or, alternatively, prohibition seeks an order directing the district court to stay enforcement of an administrative decision.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station or to control an arbitrary or capricious exercise of discretion. See NRS 34.160; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). This court may issue a writ of prohibition to arrest the proceedings of a district court exercising its judicial functions when such proceedings are in excess of the district court's jurisdiction. See NRS 34.320; *Smith v. Eighth Judicial Dist. Court*, 107

Nev. 674, 677, 818 P.2d 849, 851 (1991). This court has discretion as to whether to entertain a petition for extraordinary relief and will not do so when the petitioner has a plain, speedy, and adequate remedy at law. NRS 34.170; NRS 34.330; *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 474-75, 168 P.3d 731, 736-37 (2007). Petitioner bears the burden of demonstrating that extraordinary relief is warranted. See *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Petitioner challenges the district court's denial of its motion to stay enforcement of an adverse order entered against it by real party in interest Nevada State Labor Commissioner in an administrative matter. When considering whether to grant a stay of a final administrative decision, the district court must determine whether the moving party has shown a likelihood of success on the merits and that the denial of a stay would cause irreparable harm, for which compensatory relief is inadequate. *Boulder Oaks Cmty. Ass'n v. B & J Andrews Enters., LLC*, 125 Nev. 397, 403, 215 P.3d 27, 31 (2009); *Labor Comm'r of the State of Nev. v. Littlefield*, 123 Nev. 35, 38-39, 153 P.3d 26, 28 (2007). The district court may also weigh the potential hardships to the parties when deciding whether to grant the stay. *Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004).

Here, petitioner contends that, contrary to the district court's conclusions, it demonstrated a reasonable likelihood of success on the merits and that it will suffer irreparable harm if a stay is not granted. Additionally, petitioner asserts that the district court failed to consider the relative hardship to be incurred by the parties if a stay is not granted. Although some evidence in the record supports petitioner's position, the district court reviews an administrative agency's factual findings for an

arbitrary abuse of discretion and will not overturn factual findings unless they are not supported by substantial evidence. *Elizondo v. Hood Machine, Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2013) (explaining the standard of review and that this court's review is the same as the district court's). Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion. *Id.* Applying this standard to the matter before us, the fact that some evidence may support a different conclusion is insufficient for us to conclude that the district court arbitrarily or capriciously exercised its discretion in determining petitioner was unlikely to succeed on the merits of its petition for judicial review.<sup>1</sup> *See id.*; *Int'l Game Tech., Inc.*, 124 Nev. at 197, 179 P.3d at 558. Similarly, to the extent petitioner challenges the Labor Commissioner's interpretation of the administrative code, the district court must also give deference to the agency's interpretation of its governing statutes or regulations when considering a petition for judicial review. *See Taylor v. Dep't of Health & Human Servs.*, 129 Nev. 928, 930, 314 P.3d 949, 951 (2013). Thus, we likewise cannot conclude that the district court abused its discretion in determining petitioner failed to demonstrate a reasonable likelihood of success on the merits with regard to these issues in denying the stay. *See*

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<sup>1</sup>The district court also concluded that petitioner's allegations regarding future harm were too speculative, such that it failed to demonstrate it would suffer irreparable harm without a stay. Based on our review of the record, we cannot conclude the district court abused its discretion in making this determination. *See Int'l Game Tech., Inc.*, 124 Nev. at 197, 179 P.3d at 558. Regardless, we note that such a finding was unnecessary to deny the motion for stay. *See Boulder Oaks Cmty. Ass'n*, 125 Nev. at 403 n.6, 215 P.3d at 31 n.6 (concluding that because there was no reasonable likelihood of success on the merits, the court need not reach whether there was irreparable harm).

*Elizondo*, 129 Nev. at 784, 312 P.3d at 482; *Int'l Game Tech., Inc.*, 124 Nev. at 197, 179 P.3d at 558.

Moreover, based on our review of the record, the district court discussed all of the relevant considerations at the hearing on petitioner's motion for stay, including the potential hardship the parties may face if the stay is not granted. Thus, we cannot conclude that the district court failed to consider the relative hardship to the parties in determining a stay was not warranted. Accordingly, we decline to exercise our discretion to consider this matter and we therefore deny the petition. See NRAP 21(b)(1); *D.R. Horton*, 123 Nev. at 475, 168 P.3d at 737.

It is so ORDERED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. James Todd Russell, District Judge  
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP/Las Vegas  
Attorney General/Reno  
DeCarlo Shanley  
Law Offices of Kristina L. Hillman  
Weinberg, Roger & Rosenfeld  
Carson City Clerk